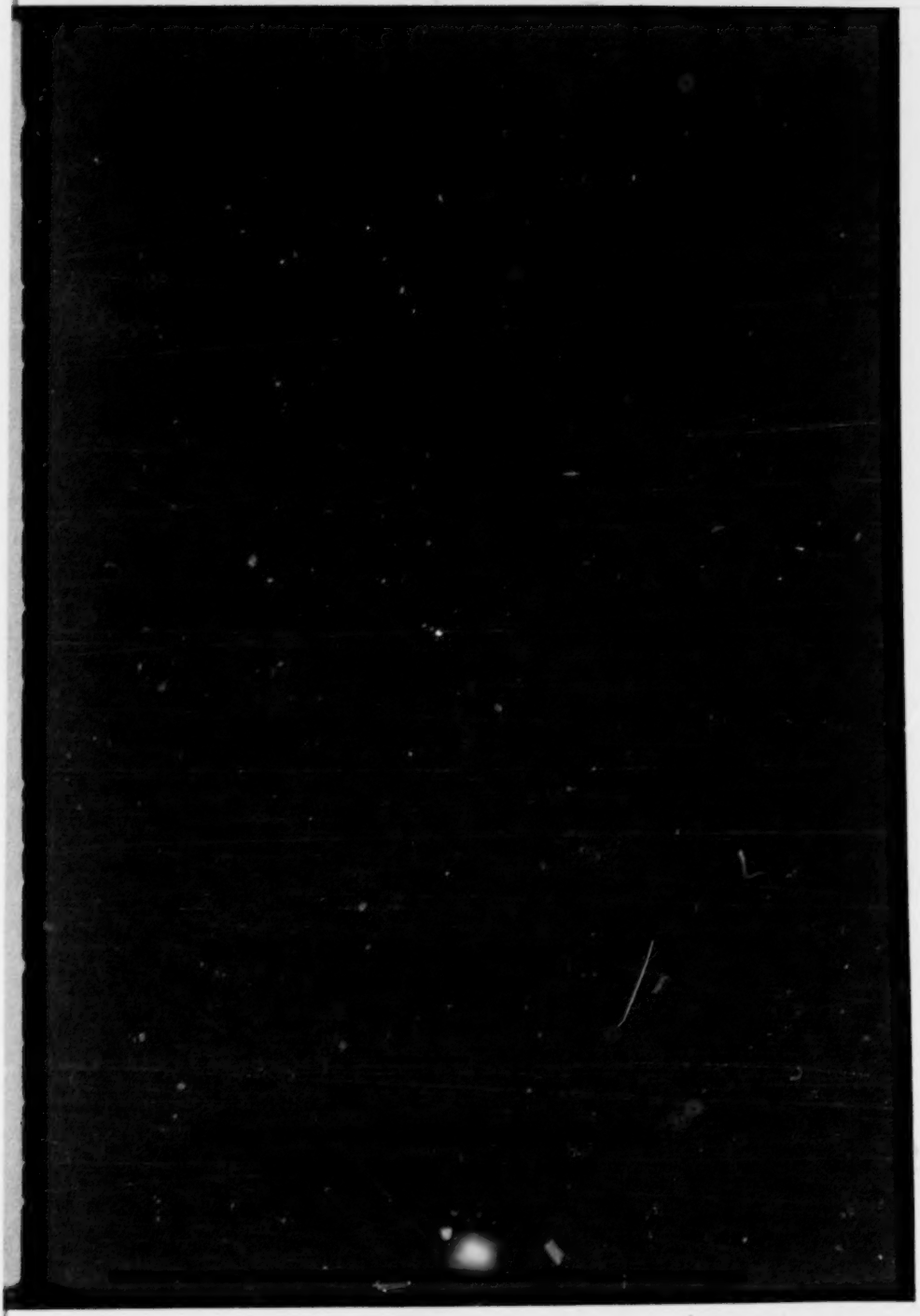

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IN THE

Supreme Court of the United States

October Term, 1972

No. 71-651

STATE OF CALIFORNIA,

Petitioner,

vs.

JUDITH H. KRIVDA and RODGER T. MINOR,

Respondents.

On Writ of Certiorari to the Supreme Court of the State of California.

APPENDIX.

INFORMATION.

Vio. Sec. 11530 H.&S. Code.

Superior Court of the State of California, for the County of Los Angeles.

The People of the State of California, Plaintiff, *v.* Judith H. Krivda, and Rodger T. Minor, Defendant. S.C. No. A 234389, D.A. No. .....

The said Judith H. Krivda, Rodger T. Minor is accused by the District Attorney of and for the County of Los Angeles, State of California, by this information, of the crime of Violation of Section 11530, Health and Safety Code, a felony, committed as follows: That the said Judith H. Krivda, Rodger T. Minor on or about the 9th day of July, 1968, at and in the County of Los Angeles, State of California, did willfully, unlawfully and feloniously have possession of a narcotic, to wit, marijuana.

Filed in open Superior Court of the State of California, County of Los Angeles, on motion of the District Attorney of said County.

Dated: Sept. 18, 1968, William G. Sharp, Clerk, by A. J. Antenorcruz, Deputy.

EVELLE J. YOUNGER, District Attorney for the County of Los Angeles, State of California

By /s/ Michael D. Marcus

MICHAEL D. MARCUS, Deputy

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MINUTES.

Superior Court of the State of California, for the County of Los Angeles.

Oct. 2, 1968.

Department No. 115.

Charles H. Older, Judge, A. W. Morris, Clerk, L. Richter, Reporter.

The People of the State of California vs. Judith H. Krivda, Rodger T. Minor. Case No. A234389.

Appearances: (Parties and Counsel checked if present. Counsel shown opposite parties represented.)

Evelle J. Younger, District Attorney, by W. Holliman, Deputy.

Edmund Brown, by A. Reppy.

Each: Cause called for hearing on defendants' motion under 995 Penal Code. Motion argued and denied. Cause transferred to Department 100 and continued to October 9, 1968 at 9:00 a.m. for trial setting. Bail.

MINUTES.

Superior Court of the State of California, for the County of Los Angeles.

October 9, 1968.

Department No. 100.

George M. Dell, Judge, G. Healey, Clerk, D. Rigby, Reporter.

Appearances: (Parties and Counsel checked if present. Counsel shown opposite parties represented.)

Defendant Bail	Defendant's Counsel		Date of Trial	Dept.
†A234389	†Judith H. Krivda and	E. Brown	Dec. 5, 1968	117
	†Rodger T. Minor	E. Brown	Dec. 5, 1968	117
A235589	Kathy Y. Miller	H. Miller	Oct. 29, 1968	118
†A235892	James Rufus Shields	H. Porter	Dec. 11, 1968	72
A405688	Gary Martin Attean and	Deputy Public	Dec. 3, 1968	119
	John Raeburn Reed and	Defender,		
	Steven Lester Sewell	D. Vinje		
		F. Pestana	Dec. 3, 1968	119
		L. McKissick	Dec. 3, 1968	119
A406452	John Patrick McMurry	C. Kaplon	Oct. 16, 1968	
Remanded				
A406143	Donna Lee Keever and	J. Roff by	Nov. 21, 1968	105
	aka Dora Fay Robinson	R. Lundy		
	Joseph Cody	J. Roff by	Nov. 21, 1968	105
		R. Lundy		

As to each defendant: Deputy District Attorney, A Kahanowicz and the defendant with counsel present.

Trial reset for 9 a.m. on date and in department indicated.

†The defendant is re-arraigned and pleads "Not Guilty".

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MINUTES.

Superior Court of the State of California, for the County of Los Angeles.

September 15, 1969, Department No. 117.

September 15, 1969.

Department No. 117.

Robert Firth, Judge, C. Drei, Reporter, J. F. Hanlon, Jr., Clerk.

Case No. A234389

The People of the State of California vs. Judith H. Krivda, Rodger T. Minor.

Appearances: (Parties and Counsel checked if present. Counsel shown opposite parties represented.)

Evelle J. Younger, District Attorney, by Q. Clifton, Deputy.

S. Bubrick by: J. Medove.

Cause called for motion under Section 1538.5 PC.

By stipulation of all counsel and the defendant(s) personally, the cause is submitted on the testimony contained in the transcript of the proceedings had at the preliminary hearing, subject to this Court's rulings, with each side reserving the right to offer additional evidence, and all stipulations entered into at the preliminary hearing be deemed entered into in these proceedings. It is further stipulated that any exhibits received at the preliminary hearing are deemed received in evidence in these proceedings, subject to this Court's ruling. People's exhibit 4 (transcript of the proceedings had at the preliminary hearing) is admitted in evidence by reference.

Further proceedings are continued to October 23, 1969 at 9:00 A.M. Each: Remain on bail.

MINUTES.

Superior Court of the State of California, for the County of Los Angeles.

October 24, 1969.

Department No. 117.

Robert Firth, Judge, J. F. Hanlon, Jr., Clerk, C. Drei, Reporter, R. Norenberg, Deputy Sheriff.

The People of the State of California vs. Judith H. Krivda, Rodger T. Minor. Case No. A234389.

Appearances: (Parties and Counsel checked if present. Counsel shown opposite parties represented.)

Evelle J. Younger, District Attorney, by R. Trauger, Deputy.

S. Bubrick, S. Bubrick.

1538.5 P.C. motion, previously submitted on preliminary transcript, is resumed. Minor is sworn and testifies on motion for defendant. Defendants rest. People rest. Motion is argued. Motion is denied. Cause continued to December 2, 1969 at 9:00 a.m. for trial setting. Each: Bail.

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MINUTES.

Superior Court of the State of California, for the County of Los Angeles.

December 12, 1969.

Department No. 117.

Robert Firth, Judge, A. D. Anderson, Jr. Clerk, C. Drei, Reporter.

The People of the State of California, vs. Judith H. Krivda, Roger T. Minor. Case No. A234389.

Appearances: (Parties and Counsel checked if present. Counsel shown opposite parties represented.)

Evelle J. Younger, District Attorney, by Q. A. Clifton, Deputy.

S. Bubrick, S. Bubrick.

Each: Matter called to hear Motion of defendant's to reopen the motion of defendants pursuant to P.C. 1538.5. The Court finds that it has jurisdiction to reopen said motion and therefore grants motion of defendant to reopen. Motion of defendant's pursuant to P.C. 1538.5 submitted on basis of transcript of preliminary hearing, additional testimony previously heard at prior hearing, the same stipulations heretofore entered into and on the basis of the same arguments and points and authorities heretofore submitted. The motion of defendants pursuant to P.C. 1538.5 is granted. The people represent that there is no other or additional evidence, and on motion of Court, the action is dismissed in the interests of justice. Each: Bail exonerated.

NOTICE OF APPEAL, DESIGNATION OF RECORD, AND DISTRICT ATTORNEY'S REQUEST FOR COPY.

EVELLE J. YOUNGER
District Attorney of Los Angeles County
600 Hall of Justice
Los Angeles, California 90012
Telephone: 626-3888
Attorney for Plaintiff and Appellant

Superior Court of the State of California, for the County of Los Angeles.

Original Filed: Dec. 19, 1969.

People of the State of California, Plaintiff and Appellant, vs. Judith H. Krivda and Rodger T. Minor, Defendant(s) and Respondent(s). No. A-234389.

The People, plaintiff in this action, hereby appeals to the California Court of Appeal, pursuant to Penal Code Section 1238, subdivision 7, from the order of this court of December 12, 1969, suppressing evidence and dismissing this cause.

It is requested that the record on appeal include, besides the normal record, the reporter's transcript of the preliminary hearing, and the reporter's transcript of proceedings taken at the hearing on the motion to suppress evidence held on Sept. 15, Oct. 23, Oct. 24 and Dec. 12, 1969. It is further requested that an extra copy of the record on appeal be made for the District Attorney [Rule 34 and 35(a)].

Dated: December 19, 1969

EVELLE J. YOUNGER
District Attorney of
Los Angeles County
HARRY B. SONDHEIM
By /s/ Harry B. Sondheim
Deputy District Attorney
Attorney for Plaintiff and Appellant

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VIOLATION SECTION 11530—HEALTH AND SAFETY CODE.

In the Municipal Court of Los Angeles Judicial District, County of Los Angeles, State of California.

Hon. Clarence A. Stromwall, Judge, Pro Tempore. Division No. 33.

The People of the State of California, Plaintiff, vs. Judith H. Krivda and Rodger T. Minor, Defendant. No. A-234389.

For the People: Michael D. Marcus, Esq.
Deputy District Attorney.

For the Defendant: Edmund G. Brown, Jr., Esq.

REPORTER'S TRANSCRIPT OF PROCEEDINGS.

September 4, 1968

Los Angeles, California, Wednesday,
September 4, 1968
9:00 A. M. Session

* * *

THE COURT: People versus Judith H. Krivda and Rodger T. Minor. Are the People ready?

MR. MARCUS: People are ready, Your Honor.

THE COURT: Are you representing both defendants, Mr. Brown?

MR. BROWN: Yes, I am, Your Honor.

THE COURT: All right. Is the Defense ready?

MR. BROWN: The Defense is ready.

THE COURT: Judith H. Krivda, is that the way you pronounce it?

DEFENDANT KRIVDA: Krivda.

THE COURT: Krivda. All right. Is that your true name, young lady?

DEFENDANT KRIVDA: Yes.

THE COURT: And Rodger T. Minor, is that your true name, sir?

DEFENDANT MINOR: Yes.

THE COURT: This is the time and place set for the preliminary examination in the case of the People versus Judith H. Krivda and Rodger T. Minor, case number A-234389. [3]

This Court understands that at the arraignment, the defendants have been informed of the charges against them and have been delivered a copy of the complaint in this case and have been heretofore advised of their constitutional rights. The defendants herein are advised

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that they have certain constitutional rights, including the following:

A speedy and public trial.

To be represented by an attorney of your own choosing at all stages of the proceedings and if you are financially unable to employ counsel, you are entitled to the services of the Public Defender.

You are entitled to be confronted by the witnesses against you, to cross examine such witnesses and at all stages of the proceeding, you are entitled to the processes of this court to subpoena witnesses in your own behalf and you are entitled to be released upon reasonable bail, pending trial.

You are not required to testify or to give evidence against yourself and you may refuse to become a witness against yourself. However, if you do testify, you can then be cross examined as to the matters to which you testify.

If you are held to answer in this matter and an information is filed against you in the Superior Court, you are entitled to trial by jury or to a trial by the Court [4] without a jury.

The Court notes that the defendants Judith H. Krivda and Rodger T. Minor are present and represented by Counsel, Mr. Edmund G. Brown, Jr.

Mr. Brown, are the defendants now present and ready to proceed in this matter?

MR. BROWN: Yes, Your Honor.

THE COURT: All right. Mr. Rodger T. Minor, are you ready to proceed?

DEFENDANT MINOR: Yes.

THE COURT: And is that Mrs. or Miss Krivda?

DEFENDANT KRIVDA: Mrs.

THE COURT: Mrs. Judith H. Krivda, are you ready to proceed?

DEFENDANT KRIVDA: Yes.

THE COURT: All right. Would you call your first witness, please, Mr. Marcus?

MR. MARCUS: Officer Gates. [5]

STEPHEN C. GATES

called as a witness by and on behalf of the People, having been first duly sworn, was examined and testified as follows:

THE CLERK: Would you state your name, please?

WITNESS: Stephen C. Gates, S-t-e-p-h-e-n G-a-t-e-s.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. MARCUS:

Q Officer Gates, what is your occupation and assignment?

A I am a Los Angeles police officer, presently assigned to juvenile narcotics.

Q For probable cause, Officer, did you receive a telephone call on July 1st, 1968 from an individual indicating certain narcotic activities at 1901 Nolden Avenue or Street in Los Angeles?

A I did.

Q What was the essence of that phone call?

A I had received the phone call from an anonymous female who had indicated that there was two individuals residing at 1901 Nolden, a Rodger and a Judy. She gave only the first names.

She indicated that both Rodger and Judy were engaging in narcotics, that they were smoking marijuana and [6] in her words, shooting speed, which is commonly

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referred to as injecting methedrine. She indicated that there were many sex parties at that location, that there was a Lesbian living there by the name of Frankie—

MR. BROWN: Your Honor, I will object to that as being irrelevant.

MR. MARCUS: Your Honor, that would go towards probable cause.

THE COURT: Well, it's being introduced for the limited purpose of probable cause, Mr. Brown. Objection overruled.

MR. MARCUS: Thank you.

Q You may continue, Officer.

A In addition, this anonymous female indicated that both Rodger and Judy were injecting the two children that were residing at that location with methedrine. She said that she had heard this from Judy, who said that she enjoyed the effects of methedrine and that she wanted her children to also experience the feelings of being under the influence of methedrine.

Q On the basis of having received this information, what did you do, if anything?

A I and my partner Officer Marsden located the address, 1901 Nolden, took a vantage point and did observe two young female children in the front of the premises. At that time I ran a utility check at that location and [7] determined that Judy Krivda was the one paying the utilities at 1901 Nolden.

I then checked criminal records with the Los Angeles Police Department and determined that there had been three individuals by the last name of Krivda arrested in Los Angeles, one of them being Edward Joseph Krivda. Upon checking his package, I determined that he had a wife by the name of Judy.

Q Did the arrest of Joseph Krivda—excuse me. Did the records indicate what Joseph Krivda had been arrested for?

A Yes. Edward Joseph Krivda had been arrested for possession of dangerous drugs for sale and also sale of dangerous drugs.

Q On July 9th, 1968, did you return to this address at 1901 Nolden?

A I'm sorry. What was the date?

Q July 9th, 1968.

A Yes, I did.

Q Were you with anyone else at that time?

A Yes. Again I was with my partner Officer Marsden.

Q At approximately what time did you return to this address?

A It was approximately 11:00 A. M. in the morning.

Q What happened, if anything, at that time?

A At that time again we took a vantage point and [8] observed several trash barrels in front of the premises at 1901 Nolden. We observed the refuse collectors approximately a block away from the premises and just as they arrived to the premises on Nolden, we—I stopped the collectors and identified myself as a police officer and requested of them that they empty their well and that they pick up the trash in front of the premises and I pointed out that the trash cans that I wanted emptied out.

Q Officer, is this dwelling at 1901 Nolden a single family dwelling or an apartment house?

A It's a single family dwelling.

Q And are there any other dwellings nearby this particular address?

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A There's—it's a hilly terrain in that area and there is a home adjacent to that address but it's, oh, approximately twenty feet down the hill.

Q Where were these trash barrels located in relation to the address at 1901 Nolden?

A Directly in front of the premises.

Q Thank you. Now, you may continue, Officer. What did you observe as to the contents of the trash barrels, if anything?

A Well, I observed—after—

MR. BROWN: Your Honor, I'd like to make an objection. I would object that any testimony regarding the contents of the garbage can is inadmissible because the [9] garbage can is the property of someone other than the officer and there has been no testimony or evidence indicating that the officer obtained permission or the consent of the owner of that garbage can or its contents, who ever it might be at that time.

THE COURT: Well—

MR. MARCUS: Your Honor, cases indicate that officers have the right to go to areas adjacent to houses, specifically back yards, lawns, et cetera, to make observations of the contents of those premises.

THE COURT: Objection is overruled, in addition to which it would appear that perhaps trash in a trash barrel, if nothing else, is abandoned property.

MR. BROWN: May I make one further comment?

THE COURT: Yes.

MR. BROWN: Your Honor, it may be abandoned, but the fact that it's under the control of the garbage collection agency and it's a fact that they purchase that and it's theirs at that point and unless permission is obtained from a responsible person, then there's no legal way that the officers can go in and search

through it. It's one thing—the cases referred to by Mr. Marcus are cases where the police have observed in back yards and have just in plain view seen various objects, but in this instance I think that the officer is going to testify that he actually went in and rummaged around in this garbage [10] can and looked and took things out and it seems to me that that property belonged to somebody. It belonged to the garbage collection agency and under the case of People versus Martin in 45 Cal. 2nd, we can rely on the ownership of someone else, and even though it may be under the custody and possession of the garbage company, we still can rely on their property right to accept and object to unlawful searches and seizures, and so for that reason I would say that there just is no consent and, obviously, there's no warrant at this point or there's no evidence of a warrant.

MR. MARCUS: Your Honor, furthermore, Counsel I believe, is too early in utilizing this objection, if it exists at all, because no evidence has been admitted either way as to any consent, which People plan on approaching, anyway.

MR. BROWN: I would make one further point, Your Honor, citing just a couple of cases. In Bielicki versus the Superior Court, it was held that a public toilet, as long as the door was shut, was an area protected by the 4th Amendment. In Katz versus the United States, a public telephone booth, even though visible through the glass door, was also held as a protected area. Even though something that was open to the public, it had that zone of privacy, and I would submit that a man's garbage can, although not as sacred as his home, should not be subject to the [11] arbitrary intrusion of the Police Department. I think

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there should be a warrant obtained or there should be some restriction on the ability of the police to rummage around in people's garbage cans, looking for evidence, without at least getting the prior approval of a magistrate, and I think that a garbage can is a thing that an ordinary person thinks he can throw things, whether it's confidential letters or otherwise, and not have to expect that some law enforcement agency is going to sneak around and rummage around in that garbage can and look for incriminating evidence, and it seems to me that a garbage can, no less than a telephone booth or a toilet stall in a public park, should be protected by the 4th Amendment.

THE COURT: Well, it's an interesting argument, Mr. Brown. However, your objection is overruled. That's not the law as I understand the cases at this point.

MR. MARCUS: Thank you.

Q Now, Officer Gates, what happened after you observed these garbage cans?

THE COURT: You might tell us where the garbage cans were in front of the house. Where were the garbage cans in front of the house?

THE WITNESS: I believe they were in the parkway, Your Honor, in front of the house, adjacent to the sidewalk. [12]

BY MR. MARCUS:

Q Did you observe a garbage truck in the vicinity at that time?

A Yes, I had. I forget where I was regarding this instructing the refuse collector, but at any rate, I did instruct the refuse collector to empty his well of the truck.

Q Now, where did this take place?

A This was approximately half a block west of the premises.

Q And did you ask the permission of these individuals if you could check the contents of the garbage cans?

A Did I ask the collectors?

Q Yes.

A No.

Q What was the exact conversation that took place?

A I indicated to them that I was interested in looking in the contents of the trash barrels. I asked them to empty the well of their truck and to place the trash—and I pointed to the trash cans that I was interested in them dumping into their well, and then meeting me and my partner approximately one block north of the location.

Q Did the collector do the specific acts that you requested?

A Yes, he did, at which time I observed him at all [13] times during this period.

Q What did you observe specifically?

A I observed the refuse collectors drive the truck to the front of the premises. I observed them to go to the back end of the truck, take the trash barrels, place them in the well and then drive one block—approximately one block north to where we were at.

Q Had the well been emptied prior to their placing these specific garbage cans and its refuse in the well?

A Yes, they had.

Q Had you examined the well prior to that time?

A I did.

Q Was there any refuse that you could observe in the well prior to their then having taken these garbage

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cans that you indicated and emptying them into the well?

A None at all.

Q Did you then later have the occasion to examine the contents of this well?

A I did.

Q And prior to examining the contents, did you observe the collectors to empty any other garbage cans, other than the ones at the address at 1901 Nolden, into the well of this truck?

A Not between the time that they had placed the items, the trash into the well and to the time that they approached me. [14]

Q And what did you observe, if anything, as to the contents of this well?

A I noticed that there was approximately five paper sacks in the well. Upon examining the sacks, I found miscellaneous marijuana debris, marijuana seeds, approximately—

MR. BROWN: Your Honor, I will object to that, having no foundation.

THE COURT: Well, sustained. What did it appear to be, Officer? How did it appear?

THE WITNESS: The brown bags contained what appeared to be a brownish green leafy substance resembling marijuana and brown seeds resembling marijuana seeds.

MR. BROWN: Your Honor, it doesn't seem to me that there's any foundation that this man is an expert in the identification of either seeds or—

THE COURT: Well, he is not testifying as an expert, Mr. Brown. Just that to him it appeared to be.

BY MR. MARCUS:

Q Did you make any observations as to the other contents of the well at that time?

A Yes. In one particular bag we found or I found approximately four to six cigarettes, which were partially burnt. The cigarettes were wrapped in yellowish paper, contained a greenish leafy substance resembling marijuana. [15] In addition to that, I found an envelope with the name of Edward Krivda, with the address of 1901 Nolden. I also found a letter, a handwritten letter with the name Frankie mentioned in it.

Q Did you find any other articles besides those just mentioned in the well?

A There were other miscellaneous papers. I don't recall the substance of all of it.

MR. MARCUS: Your Honor, at this time I'd like to have marked for identification collectively as People's One three pieces of paper, one an envelope with the name of Eddie Krivda and the address of 1901 Nolden on the envelope. It would appear to be some advertising type mail envelope. The other is a white lined piece of paper, dated Saturday, 13th, signed by Al, written in pencil, and the other a three by five card dated Wednesday, 6-26, with the name of Rodger and Judy on the card.

THE COURT: All right. It will be so marked.

MR. MARCUS: May I approach the witness?

THE COURT: Yes.

MR. MARCUS: Thank you.

Q Officer Gates, I have here three items collectively marked for identification as People's One. Are these items which you found in the well on that date on July 9th, 1968?

A Yes, they are.

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Q And I'd like to draw your attention specifically [16] to the three by five card, marked Rodger and Judy, with other writing on it. Was this card also found in the well on that date?

A I believe it was.

Q And is this lined paper the one which had the name of Frankie on it?

A Yes, it is.

Q Are there any identifying marks on these items?

A Yes.

Q And what mark is that?

A My partner's initials, the letter W.

Q Was this initial put on the item in your presence?

A Yes.

Q Now, what happened, if anything, after you made these observations as to the contents of the well of the truck?

A Would you repeat the question?

Q What happened, if anything, after you made these observations as to the contents of the well of the truck?

A At that time I relocated myself at a vantage point and observed a male Caucasian, who was later identified as Rodger Minor, come from the premises and pick up the—

MR. BROWN: Your Honor, I didn't hear the witness. Did he say that he was identified at that time?

THE COURT: Later identified. [17]

MR. BROWN: Later.

THE WITNESS: —come from the premises and pick up the trash barrels which had contained the debris which resembled marijuana in them and take them to the front porch of the home.

BY MR. MARCUS:

Q And is that person, later identified as defendant Minor, now sitting in court?

A Yes.

Q The one whom you saw pick up the trash barrels?

A Yes.

Q Would you please point to that individual?

A Yes. He is the gentleman seated between counsel and Judy Krivda.

MR. MARCUS: Indicating the defendant Minor.

THE COURT: Yes.

BY MR. MARCUS:

Q How was the defendant Minor dressed at that time?

A He was merely wearing a towel around his waist.

Q What happened, if anything, after that?

A At that time we requested the—my partner and I requested the assistance of a uniformed sergeant, who accompanied us to the premises, at which time the uniformed officer and myself approached the front of the premises [18] while Officer Marsden stayed at the back. I was met at the front door by defendant Minor, at which time I placed him under arrest for possession of marijuana.

Q At approximately what time of day was that?

A It was approximately 2:30 in the afternoon.

Q And how was the defendant Minor dressed at that time?

A He was dressed in the same manner, with a towel wrapped around his waist.

Q Did he have any other articles of clothing on?

A Not that I recall.

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Q And you placed him under arrest at that time?

A Yes, I did.

Q For what, if you remember?

A For possession of marijuana.

Q What happened then?

A At that time the uniformed sergeant let my partner in the back door. My partner went to the upstairs portion of the home and indicated that there was a female suspect upstairs.

Q Did you observe any contents of the—

THE COURT: Just a moment. Let me interrupt you a minute.

Do you have some statement that you wish to make at this time, Mr. Brown?

MR. BROWN: Your Honor, I have some question [19] whether probable cause has been established and I'm wondering whether I should take the officer on voir dire or wait and make it on cross examination.

THE COURT: As to what? With reference to the entry?

MR. BROWN: Yes, the entry, whether it was in compliance with the Penal Code, whether there was a tie-up between the garbage can and the house.

THE COURT: You can take him on voir dire now or wait and do it under cross examination, which ever you prefer, Mr. Brown. I think perhaps it would be more orderly, at least at this stage of the proceeding, to do it on cross examination.

MR. BROWN: All right.

THE COURT: In any event, whatever objection you have based upon that, why, I will consider it at that time.

BY MR. MARCUS:

Q Officer, did you enter the house at that time after placing the defendant Minor under arrest?

A Yes.

Q What observations, if any, did you make at that time?

A Upon entering the upstairs portion of the house, I observed three cigarettes in the ash tray, wrapped in yellow paper, containing a green leafy substance resembling [20] marijuana.

Q Did you make any observations as to any other contents of the house?

A I found the water pipe located in the lower portion of the home.

MR. MARCUS: Your Honor, at this time I'd like to have marked for identification as People's Two a Los Angeles Police Department evidence envelope and its contents, the envelope identified by DR number 68-547-958. May I approach the witness?

THE COURT: Yes. The envelope and its contents may be marked People's Two.

MR. MARCUS: Thank you, Your Honor.

BY MR. MARCUS:

Q Officer, I have here People's Two for identification. Would you please take the envelope, open it and describe what you are doing?

A I am now opening the envelope by breaking the Los Angeles Police Department seal, now taking a water pipe, which is commonly used for smoking marijuana—

MR. BROWN: I will object to that last comment, Your Honor. I don't know that there's any foundation for it.

THE COURT: All right. Objection sustained.

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THE WITNESS: A package of Zig Zag wheatstraw [21] paper, a box containing numerous capsules which are maroon and gray in color, another box containing numerous capsules which are gray and maroon in color, a vial, plastic transparent vial containing what appears to be numerous marijuana seeds and a second vial, transparent, which also contains what appears to be numerous marijuana seeds. Then an envelope, marked number nine—

MR. BROWN: I don't—is the witness reading from a piece of paper?

THE COURT: Are you referring to something, Officer?

THE WITNESS: Not yet, Your Honor.

THE COURT: All right.

THE WITNESS: The envelope marked number nine contains numerous pieces of yellow paper which are rolled in a cigarette form, containing a greenish substance resembling marijuana, and a second envelope, marked number six, containing a bindle, a yellow bindle. Inside the yellow bindle is debris and seeds and yellow paper. The debris and seeds resemble—the debris resembles tobacco and marijuana, and an empty capsule, red and yellow in color.

BY MR. MARCUS:

Q Which of these contents which you have just described did you, Officer, find in or around the location at 1901 Nolden? [22]

A May I refer to my report?

THE COURT: Well, have you seen it, Mr. Brown?

MR. BROWN: No, I haven't.

MR. MARCUS: I am now handing a carbon of a property report, Los Angeles Police Department property report, to Defense Counsel.

THE COURT: Any objection to his referring to the report?

MR. BROWN: No objection.

THE COURT: Indicate where these items were found and who found them.

THE WITNESS: Yes, Your Honor. The envelope marked number nine contains the miscellaneous debris which was found by myself in the upstairs bedroom in an ash tray on a dresser.

BY MR. MARCUS:

Q What other contents of the envelope marked People's Two did you find?

A A portion of the item in envelope number seven was found in the garbage can by myself and my partner.

MR. BROWN: Your Honor—

BY MR. MARCUS:

Q Would that include—

MR. BROWN: May Judith Krivda be excused for a [23] few moments? Her child has to go to the bathroom.

THE COURT: All right. We'll take a short recess.

(Recess taken.)

THE COURT: All right. The record will reflect that both defendants are present. Will you proceed, Mr. Marcus?

BY MR. MARCUS:

Q Officer, you had just discussed that the contents of, I believe, People's—

THE COURT: He was identifying an envelope by number seven, which I don't previously recall as having—

BLEED THROUGH POOR COPY

MR. MARCUS: I think he also identified just prior to that an envelope number nine.

THE COURT: Yes, and he discussed the contents of that envelope and where he found it. Now he has some new envelope number seven.

BY MR. MARCUS:

Q Now, does that envelope have any other markings on it besides nine, Officer Gates?

A Yes, it does. It has black lettering, T-4.

Q And does the envelope marked number seven have any other markings, other than number seven?

A Yes. It's marked T-3. [24]

Q Besides these particular items, T-3 and T-4, did you find any other contents of this envelope?

A Yes. The water pipe, which I found in the front room.

Q What was the condition of the water pipe at the time that you found it in the front room?

A The same condition you see it in now.

Q Did it have any debris in it? Do you remember?

A Not that I recall.

Q Were there any contents of the pipe at the time that you found it?

A Pardon?

Q Did the pipe contain anything at the time that you found it, to the best of your memory?

A I don't recall.

Q And is this address at 1901 Nolden in the City and County of Los Angeles?

A Yes, it is.

MR. MARCUS: No further questions.

THE COURT: All right. You may cross examine, Mr. Brown.

CROSS EXAMINATION

BY MR. BROWN:

Q Officer Gates, how far is the house from the place where you noticed the trash barrels to be located? [25]

A Approximately thirty-five yards, thirty to forty yards.

Q And are there any other houses in the area?

A Yes.

Q On direct examination you testified that it appeared to you to be a single dwelling. What did you base that on?

A I based it on the appearance of the home, the structure of the premises.

Q And what was that?

A It had the physical appearance of being a single family dwelling.

Q And what are those physical characteristics?

A The size was indicative of a single family dwelling. The structure was indicative of a single family dwelling. The exterior layout was indicative of a single family dwelling.

Q And what was that size and structure and exterior layout?

A Do you want the general size?

Q Just a general description.

A It's a two-story home. I have no idea what the square footage of the home is, Counsel.

Q No. I don't mean that.

A I believe there was shakes on the outside, a front porch and a back porch. [26]

MR. BROWN: I have a photograph that I'd like to show the witness. Can we mark this as defendant's One?

THE COURT: Yes. Defendant's A.

MR. BROWN: Defendant's A.

BLEED THROUGH POOR COPY

Q I am showing you a photograph marked Defendant's A. Can you identify the dwelling that is shown in that picture?

A Yes. It appears to be the home in question.

Q Does that picture show the position of the garbage cans when you first observed the house?

A Yes, approximately.

MR. BROWN: Shall I have the Clerk mark this, Your Honor?

THE COURT: Yes. Just hand it to the Clerk.

All right. At this time I will interrupt you for a moment, Mr. Brown.

(Discussion off the record in the pending case.)

THE COURT: All right, Mr. Brown.

BY MR. BROWN:

Q Officer, you testified that you made a utility check. What utilities did you check with?

A I checked through our intelligence division, who has liaison with the utilities department. I'm not quite certain what utilities they checked. It was not—[27] as I recall, there was no telephone. It was not the telephone information. I believe it was either the water or the gas.

Q Could you explain that process by which you check the utilities?

A Well, the process that I go through is merely making a request to intelligence division by giving them the location and they in turn check with their liaison officer to that particular company.

Q But you don't know specifically which utility they found in the name of Krivda?

A It was either the gas or the water.

Q Did you testify that the informant spoke to you on the telephone?

A Yes.

Q Did she identify herself?

A No, she did not.

Q Did she say that she observed herself any unlawful activity?

A Yes, she did.

Q That she actually saw them?

A Yes.

Q You also testified that you checked on the record of an Edward Joseph Krivda.

A That's correct.

Q Did you learn whether he had been convicted or [28] merely arrested?

A I don't recall if there was a disposition on the arrest or not and I don't recall what the disposition was but—

Q Do you recall when he was arrested?

A No, I don't.

Q Do you recall if there was any indication where he was arrested, in Los Angeles County or somewhere else?

A I believe the arrest took place in the Valley, Los Angeles.

Q Did you check the telephone directory to find out if there were any Krivdas in the Valley?

A I don't believe I did.

Q You didn't check the northwest section of the phone book for any Joseph Krivdas?

A No. I had made my request via intelligence division for anyone by that name.

Q So it is possible that there may have been a number of Krivdas living in Los Angeles?

MR. MARCUS: I'd object to that question, Your Honor. It asks for a conclusion on the part of the witness.

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THE COURT: Well, of course, all things are possible, Mr. Brown. I think you might ask him to explain how he came to the conclusion that this was the particular Krivda. I think that would be a proper question. [29]

BY MR. BROWN:

Q How did you conclude that the Krivda whose arrest record you were informed about resided at 1901 Nolden Avenue?

A I concluded that from examining the package in question and at which time I found out that this Edward Joseph Krivda had a wife by the name of Judy, and then later, upon examining the garbage container, which had the name Edward Krivda.

Q Was the name Edward or was it Eddie?

A It says Eddie.

Q Did the package that you referred to state where Mr. Krivda lived?

A Yes, it did.

Q And where was that?

A I don't recall.

Q Did it state that he was married to this Judy? Is that—he had a wife named Judy?

A That's correct.

Q But you don't know the date at which this information was compiled, as of what date?

A It seemed like it was a year or several years ago.

Q Now, when you examined the contents of the garbage can, what date was that?

A That was July the 9th, 1968. [30]

Q And on what date was the telephone call from the anonymous informant?

A That was July the 1st.

Q Did you at this point make any attempt to obtain a search warrant or at any time did you obtain a search warrant?

A No, I did not.

Q On the date of July 9th, when did you first station yourself outside the premises at 1901 Nolden Avenue?

A Pardon?

Q At what point in time did you first take up a position outside 1901 Nolden Avenue?

A On the first occasion?

Q No. On July 9th.

A July 9th? That was approximately 11:00 A. M.

Q And the arrest took place at 2:30?

A That's correct.

Q And it was at 11:00 o'clock that you examined the seeds and the debris, is that correct?

A No. I think it was near noon.

Q Now, after you examined these seeds and debris, did you make any attempt to take them to a chemist to examine them?

A Later, yes.

Q On that date before you arrested the defendants?

A Before the arrest? [31]

Q Yes.

A No.

Q You didn't make any attempt to either go to a chemist or go to a magistrate to obtain a search warrant on the basis of what you found?

A No, I did not.

Q Have you had any training in the identification of plant seeds?

A Yes.

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Q In other words, when you looked at these seeds, what was it that led you to the conclusion that they resembled marijuana seeds?

A Well, my past experience, training that I have received at the Police Academy, training that I have received from experienced officers, numerous arrests that I have made in the past.

Q What other kinds of seeds—have you looked at other kinds of seeds so that you know one seed from another?

A I have looked at other kinds of seeds. I know some seeds from others.

MR. BROWN: I have some seeds in a vial here that I'd like to—

MR. MARCUS: Your Honor, I would object to the relevance of—

THE COURT: If it is in the nature of an experiment Mr. Brown, objection sustained. [32]

MR. BROWN: Well, the purpose is, Your Honor, to attempt to establish whether the seeds that the officer said that he found in the garbage can would to a reasonable man appear to be marijuana seeds and it is our contention that they look like any other seeds.

MR. MARCUS: Your Honor, the reasonable man would not necessarily receive any training as to the identification of—

THE COURT: Well, in any event, I believe the question is a subjective one with the officer. If the officer reasonably believed under the circumstances subjectively that these were seeds resembling marijuana, I think that's sufficient.

MR. BROWN: I think there has to be some reasonable basis.

THE COURT: That's assuming he was mistaken.

MR. BROWN: Well, the point that I would attempt to prove is that these seeds looked like any other seeds.

THE COURT: Assuming he was mistaken. Your question goes to the validity of the arrest, is that correct?

MR. BROWN: That's right.

THE COURT: Well, let's assume he was mistaken. Even if he were mistaken, I don't think that would invalidate the arrest.

MR. BROWN: Well, the only thing the officer had, really, was an anonymous phone call, together with some [33] seeds and some debris, and it, as we would like to show, that debris looked as much, if not more, like hand-rolled cigarettes and like ordinary bird seed or a number of other kinds of seeds, that would—at least, I think it would undermine any probable cause and would, at least, require the officer to take it before a magistrate or before a chemist.

THE COURT: Well, I think if the Deputy District Attorney Mr. Marcus feels magnanimous, I believe he may be willing to stipulate that he might have been mistaken. I don't think that would affect the probable cause.

MR. MARCUS: Probable cause would not require absolute certainty.

THE COURT: That is my understanding.

MR. BROWN: But the point is, Your Honor, we happen to have brought some hand-rolled cigarettes that are partially burnt and it is my contention that they look just like the evidence there and if that's probable cause, then anyone who smokes hand-rolled cigarettes is subject to arrest for possession of marijuana.

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THE COURT: Oh, I don't think that that necessarily follows. You know, it's the old story. All horses have four legs and all horses are animals; therefore, all animals are four-legged horses. One does not necessarily follow the other.

MR. BROWN: That's true, but in this case there's a very little substance. I'm going to get into that, just [34] exactly what he found in the garbage can and whether he was sure at that time.

THE COURT: Well, ask him the question.

BY MR. BROWN:

Q When you found the burnt cigarettes or the cigarette butts, at that time did you believe them to be marijuana?

A Yes, I did.

Q Did you have any doubt in your mind about that?

A None at all. Not in my mind.

Q You didn't say to the other officer that these might have been rolled cigarettes?

A No.

Q Did you hear him say that to you?

A No.

Q Could you show me exactly what you found in the garbage can as distinguished from inside the house?

A Yes. What is here in the bindle is what was found in the garbage can.

Q When you say bindle, are you referring to this lined piece of yellow paper?

A Yellow paper, yes.

Q I was curious as to why you call that a bindle.

A Well, when it's folded in this manner, it's referred to as a bindle. [35]

THE COURT: Did that come out of one of those envelopes marked T something or other?

THE WITNESS: Yes, Your Honor. T-3.

BY MR. BROWN:

Q And you found all that in the garbage can, is that right?

A Yes.

Q Was anything else found in the garbage can, aside from the letters and the paper, other than that, that resembled marijuana seeds?

A Not that I recall.

Q Could you explain—it says—I'm looking at the package. What is this, People's Number Two?

MR. MARCUS: Yes.

BY MR. BROWN:

Q And I notice it says, "Total number of packages, three." Would you explain what that means? What does that refer to? I seem to see many packages here.

THE COURT: Off the record. Let me interrupt you a moment, Mr. Brown.

(Discussion off the record in the pending case.)

THE COURT: All right. You may continue.

MR. BROWN: Your Honor—

THE COURT: I don't believe he's answered the [36] question.

THE WITNESS: Well, the first digit here indicates this is package number one and there is a total of three packages.

BY MR. BROWN:

Q I see. But there are many packages within this package that you are now holding?

A Well, there was these two packages or these two envelopes with the miscellaneous items, the two boxes

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and the vial and the pipe and the package containing the yellow paper.

Q What are we calling this? How are you referring to this? Does that have a number?

MR. MARCUS: Indicating the bindle.

THE WITNESS: This was T-3. This was in the envelope marked T-3.

BY MR. BROWN:

Q So we can call that T-3.

Your Honor, is it your understanding that evidence to show that the cigarette butts that are in—what did you call that, T-3?

THE WITNESS: Yes.

MR. BROWN:—in T-3 and the seeds resembled hand-rolled cigarettes? Is it your position that that's [37] irrelevant?

THE COURT: Well, I think the Deputy District Attorney would be willing to stipulate that it so resembles. All we are concerned with is what's subjective in the mind of the officer.

MR. BROWN: Well, no. I would maintain that there has to be a reasonable basis.

THE COURT: Well, yes, I agree with you, and you may question the reasonableness.

MR. BROWN: Well, I also wanted to introduce evidence that there are—

THE COURT: If you intend to embark on any experiments, why—

MR. MARCUS: I would object to any experiments as being immaterial and irrelevant.

THE COURT: I will sustain the objection.

MR. BROWN: Well, the only other point that I was going to put on—I'd like to just make the offer for the record—is that I do have government statistics

that show that there are something in the neighborhood of ten billion hand-rolled cigarettes smoked each year in the United States and that the probabilities of that being something other than that are not particularly high.

THE COURT: Well, I think that Mr. Marcus might even stipulate that that's true.

MR. MARCUS: I will stipulate, if Counsel would [38] so wish.

THE COURT: I don't think that affects the probable cause.

MR. MARCUS: Although I would query the ten billion figure, Your Honor.

MR. BROWN: I have it from the Department of Agriculture. I can show it to you.

Q One final question. Officer, did you knock at the door when you entered this house?

A No, I did not.

Q Did you announce the purpose of your entry?

A Yes.

MR. BROWN: No further questions.

MR. MARCUS: A couple further questions, Your Honor.

THE COURT: Yes.

REDIRECT EXAMINATION

BY MR. MARCUS:

Q Officer, what are the colors of the cigarette wrappings on the partially burned cigarettes in the bindle which has been marked as T-3?

A Yellow paper.

Q Does your experience and training and education give you any indication as to where or when yellow papers are found on partially or fully rolled cigarettes? [39]

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A Yes.

MR. BROWN: I will object to that, Your Honor. I don't think there's any foundation.

THE COURT: It's kind of a vague question, Mr. Marcus.

MR. MARCUS: I will rephrase the question.

THE COURT: Objection sustained.

BY MR. MARCUS:

Q Officer, did you receive any instruction as to the identification of marijuana cigarettes?

A Yes, I have.

Q Did you ever make any arrest for the possession of marijuana when it was rolled in cigarette form?

A Yes, I have.

Q And at that time what was the color of the paper which was rolled on these cigarettes?

A Both in a situation where it was presented to me at formal training at the Academy and at arrests that I have made at the field, it was wrapped in yellow paper.

Q Now, at this instruction, were you shown marijuana in seed form?

A Yes.

Q And do the seeds appearing now, which have been partially or are part of the exhibit marked for identification as People's Two, do these seeds resemble those seeds [40] initially shown to you when you received your instruction?

A Yes, they do.

Q As being marijuana?

A Yes.

Q Did you have a belief at that time that the partially burned cigarettes and the seeds and debris were of a particular kind or of a particular derivation?

A The ones in question?

Q Yes.

A Yes.

Q What was your belief at the time you observed these contents, these debris?

A It was my belief that they appeared to be marijuana seeds.

Q Thank you. Now, when you first observed defendant Minor, where was he standing?

A In the doorway, front doorway.

Q Was there anything separating you from defendant Minor at that time?

A Yes. A screen door.

Q And did you talk through the screen door?

A Yes.

Q Is that when you placed the defendant under arrest?

A Yes.

MR. MARCUS: Thank you. No further questions. [41]

THE COURT: Anything further, Mr. Brown?

MR. BROWN: Well, the only thing further I have, Your Honor, is that I would really like to learn for my own edification how the officer could distinguish the debris and seeds that I have in this match box from what he has at the witness stand.

THE COURT: What relevance would it have?

MR. BROWN: The relevance it has is that the officer could not possibly form any more than a conclusion that the material that he found in the garbage can could have either been marijuana or could have been hand-rolled cigarettes, that there was no way for him to decide one way or the other.

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THE COURT: It's my understanding that that's all that is required, that that conclusion be reasonable.

MR. BROWN: Not when there are other means, that he could have taken it to a chemist.

MR. MARCUS: Well, Your Honor, under the—

MR. BROWN: He was waiting there for three hours.

MR. MARCUS: Under many cases, like People versus Superior Court, all that's required for—

THE COURT: There are a lot of cases, People versus Superior Court, Mr. —

MR. MARCUS: Excuse me. 261 ACA 797. The definition of probable cause is where exists such a state of facts as would lead a man of ordinary care and prudence [42] to believe and conscientiously entertain an honest and strong suspicion that the person is guilty of a crime or that, under another case, like People versus Guidry, 262 ACA 530, that there is probable cause to arrest if the information that was acted upon would cause a reasonably prudent man to believe and conscientiously entertain an honest and strong suspicion that the accused is guilty, again just corroborating what the Court has told Defense Counsel as to what is required in the mind of the arresting officer.

THE COURT: That's my understanding of the law.

MR. BROWN: Well, Your Honor, my only point is that the Prosecution has made some attempt to taint the yellow paper that the people use for hand-rolled cigarettes with some criminality and I am saying there are ten billion of those cigarettes around. I don't know if they all have yellow paper or not, and a reasonable man at that point would only perhaps find some suspicion and at that point, since he had adequate time and evidently there was no urgency, he could have

either gone to a chemist or, at least, presented it to a magistrate.

MR. MARCUS: Your Honor, the People are not claiming that anyone in the mere possession of yellow Zig Zag papers would be subject to arrest. The People are claiming here, however, that there are other facts separate from the debris in question which led to a state [43] of mind of the officer as to the acts committed at this address and to a basis for arrest, and I think that Counsel is avoiding looking at these other facts.

Furthermore, that even if it is shown that these cigarettes could have been hand-rolled, the guilt of the party is not determined until it is also shown that these cigarettes contained a prohibited narcotic. If it is shown that the cigarettes themselves contain only tobacco, then the parties cannot be found guilty of a crime and I think that this is the question which perhaps Counsel is getting at and avoiding or ignoring at this time.

MR. BROWN: Well, the only point is that I think the police should not be able to arrest everyone who has hand-rolled cigarettes in his garbage can.

THE COURT: I think what you say is true.

MR. BROWN: Even adding an anonymous tip to it.

THE COURT: No. I think when you start adding things to it, Mr. Brown, you get what we call probable cause, and I think we have it in this case, at least at this point.

Any further questions? I have a few questions that I want to ask the officer.

MR. BROWN: No, other than the fact that I still would—I just want to make clear for the record that I have made an offer to show debris and seeds that—[44]

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THE COURT: That you want to conduct an experiment?

MR. BROWN: Yes, and you don't want that.

THE COURT: All right. Your request to conduct an experiment to test the ability of the officer to differentiate between marijuana seeds and some other type of seeds—

MR. BROWN: And marijuana butts and hand-rolled cigarette butts.

THE COURT: All right. Well, your request is denied.

What type of collection outfit was this? Was it city collection or private collection?

THE WITNESS: Yes. It's municipal, Your Honor.

THE COURT: All right. When you went up to the door, did you have a uniformed sergeant with you?

THE WITNESS: Yes, I did.

THE COURT: Who knocked on the door?

THE WITNESS: Neither of us knocked on the door. It was a matter of being met by the defendant as we approached the door, the screen door.

THE COURT: The defendant Mr. Minor came to the door as you came up to the door?

THE WITNESS: Yes.

THE COURT: Was the screen door closed?

THE WITNESS: Yes, it was. [45]

THE COURT: Was the door inside—was there another door, other than the screen door?

THE WITNESS: Yes.

THE COURT: Was that open?

THE WITNESS: Yes.

THE COURT: And Mr. Minor came up to the screen door?

THE WITNESS: Yes.

THE COURT: Who said what to whom?

THE WITNESS: I informed him that he was—

THE COURT: Well, what did you tell him?

THE WITNESS: I told him that he was under arrest for possession of marijuana.

THE COURT: And what did he say?

THE WITNESS: He said nothing, at which time I entered.

THE COURT: Did you open the door?

THE WITNESS: Yes.

THE COURT: Did you go in?

THE WITNESS: Yes.

THE COURT: Did you place him under arrest?

THE WITNESS: Yes.

THE COURT: And then I think you indicated that the police uniformed sergeant went and let your partner in the back door?

THE WITNESS: That's correct. [46]

THE COURT: And then what happened?

THE WITNESS: I was checking the downstairs portion of the apartment.

THE COURT: Well, teli us what did you do with the defendant Minor?

THE WITNESS: Placed the handcuffs on him.

THE COURT: Did you sit him down somewhere?

THE WITNESS: Sat him in a chair and watched him, and at the same time, I was checking the downstairs portion of the house.

THE COURT: What did the downstairs portion of the house consist of?

THE WITNESS: Living room, kitchen, back porch. I believe there was a back bedroom, bathroom.

THE COURT: Did you find anything downstairs?

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THE WITNESS: Downstairs I found the water pipes. My partner found—

THE COURT: Where did you find the water pipes?

THE WITNESS: In the living room.

THE COURT: Where in the living room?

THE WITNESS: I believe it was on a bookcase. I don't recall what it was on but—

THE COURT: What else did you find downstairs?

THE WITNESS: I personally found nothing else downstairs.

THE COURT: All right. And your partner went [47] upstairs, is that correct?

THE WITNESS: Yes.

THE COURT: All right. With reference to the Zig Zag papers, who found those?

THE WITNESS: I believe my partner did, Officer Marsden.

THE COURT: All right. How about the two boxes of capsules? Who found those?

THE WITNESS: Officer Marsden.

THE COURT: All right. How about the two vials containing seeds? Did you find either of those?

THE WITNESS: No, I did not.

THE COURT: All right. There are two envelopes. Apparently one is marked T-3 and one is marked—

THE WITNESS: T-4.

THE COURT: T-4. All right. T-3 is the one that contains the debris recovered from the trash?

THE WITNESS: That's correct.

THE COURT: All right. T-4 contains something that was apparently found in the upstairs bedroom, is that correct?

THE WITNESS: That's correct.

THE COURT: You didn't find that, is that right?

THE WITNESS: Yes, I did.

THE COURT: You found that?

THE WITNESS: Yes. [48]

THE COURT: Then you did go upstairs?

THE WITNESS: Yes.

THE COURT: All right. When did you go upstairs?

THE WITNESS: Approximately two minutes after entering the premises.

THE COURT: All right. And who stayed with the defendant Minor?

THE WITNESS: The uniformed sergeant.

THE COURT: All right. And what's upstairs?

THE WITNESS: Upstairs, several bedrooms. I believe there's two bedrooms upstairs.

THE COURT: And was the defendant Krivda in one of them?

THE WITNESS: Yes.

THE COURT: And is that where you found the items contained in T-4?

THE WITNESS: Yes.

THE COURT: And where was it that you found them?

THE WITNESS: The items in T-4 were found in an ash tray on a dresser in the bedroom upstairs.

THE COURT: Which defendant Krivda was in?

THE WITNESS: Yes.

THE COURT: All right. Now, there's an envelope marked number six there. Am I confused or is there such an envelope? Apparently it's—is that the same as T-3?

THE WITNESS: T-3. I believe I said six and I [49] believe it's seven. I think at one point in my testimony I did say six.

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THE COURT: All right. In any event, to resolve any confusion, the—

THE WITNESS: Number seven is T-3.

THE COURT: Number seven is T-3. There is no number six per se, is that correct?

THE WITNESS: Number six would be the vials in our evidence report.

THE COURT: All right. Did you place the defendant Krivda under arrest, also?

THE WITNESS: Yes, I did.

THE COURT: Anything further, Mr. Marcus?

MR. MARCUS: No, Your Honor.

THE COURT: Mr. Brown?

MR. BROWN: Nothing further.

THE COURT: All right. You are excused, Officer. At this time we'll take our noon recess, and how many more witnesses do you have?

MR. MARCUS: One, Your Honor.

THE COURT: The other officer? All right. We'll continue until—

MR. BROWN: Your Honor, I have one witness that will only take about five minutes.

THE COURT: Well, he will be a Defense witness, will he not? [50]

MR. BROWN: Yes.

THE COURT: You may find that it is not necessary Mr. Brown. Let's wait and take it in proper order. I think it might be better.

All witnesses and defendants in connection with this case are directed to return at 1:30. [51]

* * *

Los Angeles, California, Wednesday,
September 4, 1968
1:30 P.M. Session

* * *

THE COURT: People versus Judith H. Krivda and Rodger T. Minor. The record will indicate that the defendants are present in the courtroom with counsel.

Will you proceed, Mr. Marcus?

MR. MARCUS: Thank you. Officer Marsden.

WILLIAM MARSDEN

called as a witness by and on behalf of the People, having been first duly sworn, was examined and testified as follows:

THE CLERK: Will you state your name, please?

THE WITNESS: William Marsden, M-a-r-s-d-e-n.

THE CLERK: Thank you, sir.

DIRECT EXAMINATION

BY MR. MARCUS:

Q Officer Marsden, what is your occupation and assignment?

A Police officer for the City of Los Angeles, assigned to juvenile narcotics.

Q Officer Marsden, were you present with Officer Gates at the 1901 Nolden Street address on July 9, 1968? [52]

A I was.

Q At approximately 2:30 P. M. on that date, where were you?

A Standing at the rear of the residence at 1901 Nolden.

Q Did you ever enter that residence?

A I did.

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Q And when was that?

A I was ushered into the residence by a uniformed sergeant.

Q What happened, if anything, after you entered the residence?

A I went immediately upstairs.

Q What observations did you make at the upstairs portion of this residence?

A I observed the defendant Judy Krivda.

Q Did you make any other observations at that time?

A Not at that time. My partner Sergeant Gates joined me there after a brief moment. He searched and I searched and I was present when he found certain articles in an ash tray.

Q Did you find any articles at all in the residence?

A Yes, I did.

Q What did you find?

A I found two Zig Zag packages, one with Zig Zag papers inside. The other one was empty. This was in the [53] upstairs.

Q Are those Zig Zag papers found before you?

A Yes. They have my initial W written on them.

Q Were those the papers which your fellow officer had found in the envelope marked for identification as People's One, which you have previously testified to?

A I believe it was One, yes.

Q Excuse me. Two, I believe.

THE COURT: Contained in People's Two.

MR. MARCUS: Was it People's Two, Your Honor?

THE COURT: Yes.

BY MR. MARCUS:

Q Were there any other items which you found at that residence?

A Yes, there was. I found seeds, which appeared to me to be and to resemble marijuana seeds. I found these in the bathroom, located in a cabinet, and they were inside a douche bag.

Q Do those seeds appear before you at this time?

A They do. They're identified with my initial W on the top.

Q Are they in two vials, clear plastic vials?

A They are.

Q And were both contents of both vials found in this douche bag? [54]

A Correct.

Q Did you find any other articles in the house at this time?

A I observed sitting on a shelf in the front room, after which my partner had pointed it out to me, what appeared to be a smoking pipe or a water pipe. I removed the water pipe from the shelf and in doing so, I noticed that located inside of the bowl was a small quantity of plant material and located in the bottom of the smoking pipe was a liquid, when I smelled and then disposed of.

Q Does that pipe appear also as part of the items collectively marked for identification as People's Two?

A I don't know if it's People's Two but it was identified earlier in the testimony.

Q Well, does that pipe now appear before you?

A It does.

Q After finding these articles, did you find any other contents of the location?

A Yes. Located in the kitchen, I found numerous pills, of which I did not know the origin. I also found two pieces of paper, one a receipt with the name Judy Krivda on it. I also found a Department of Water and

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Power, I believe, utility bill with the name Judith Krivda on it, including the address 1901 Nolden.

MR. MARCUS: Your Honor, at this time I'd like to have marked for identification as Peoples' Three two [55] items, what would appear to be a receipt dated June 25th, 1968, with the name of defendant Judy Krivda for the amount of $75.00, indicating it is for rent at the address of 1901 Nolden Street, and a closing bill for the Department of Water and Power, addressed to Judith H. Krivda at 1901 Nolden Street.

THE COURT: All right. That may be so marked.

MR. MARCUS: Thank you. May I approach the witness?

THE COURT: Yes.

BY MR. MARCUS:

Q Officer Marsden, I have here two items which have been collectively marked for identification as People's Three. Are these the rent receipt and the water and power bill which you observed to be in that residence?

A Yes, it is or they are.

Q Was defendant Krivda placed under arrest at this time?

A I don't recall if it was at this time or at a later time. She was in the process of getting dressed when I first entered into the upstairs bedroom.

Q Officer, what was done with all these items after they were found at the location, specifically, the seeds, the water pipe, the items marked as T-3 and T-4 and the other items which now appear before you? [56]

A Each of the items that have been removed from this package and the pieces of paper I took into custody. In the case of the water pipe, the seeds, the different pills, the different debris, I placed them in-

side a manila envelope. I filled the front of the manila envelope out, I sealed the rear of the envelope with my signature, the date, my serial number, and I booked it into the Property Section of the Los Angeles Police Department.

Q When did you next see this envelope?

A This morning, 9:00 o'clock.

Q And did you bring it directly to court with you at that time?

A I did.

MR. MARCUS: No further questions.

CROSS EXAMINATION

BY MR. BROWN:

Q How long did you conduct a search of the premises which you have discussed so far in your testimony?

A I would estimate between a half hour and forty-five minutes.

Q Did you enter the dwelling through the rear?

A Yes, I did.

Q Did you notice that there was another dwelling behind that, behind the dwelling that you entered?

A There progresses up the hill, I think, three [57] different structures, the first one being like a shed, which I am sure is on the same property as the house in which the two defendants were residing. Behind that is a portion of a residence which had been gutted by a fire, and higher up the hill was a residence which was surrounded by a fence.

Q When you say you are sure that it belonged on the same property, what property are you referring to?

A I am referring to the property at 1901 Nolden.

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Q And are you able to tell exactly what the limits of that property are, where the property line begins and ends?

A There is a fence directly behind this wooden shed which is located—which appears to be located at the rear of 1901 Nolden.

Q Is there any fence around this house that you indicate is at 1901 Nolden?

A Not that I recall.

MR. BROWN: I have no further questions.

MR. MARCUS: No redirect, Your Honor.

THE COURT: I have nothing further.

MR. BROWN: The problem is, Your Honor, some of that stuff looks like tobacco and I don't know how much of the quantity is marijuana.

THE COURT: All right. Well, then, why don't we get the chemist? [58]

MR. MARCUS: May we recess the case at this time?

THE COURT: All right. Let's take a short recess at this time in this case.

MR. MARCUS: Your Honor, may the officers be excused?

THE COURT: Do you want the officers any further?

MR. BROWN: No, I don't see any need.

THE COURT: All right. The officers may be excused.

MR. MARCUS: Very well. Also, for the record, Counsel for the defendant did open one of the cigarettes, the burnt cigarettes, and examined the contents, and part of it, I believe, fell out into the bindle, the yellow bindle.

MR. BROWN: Yes.

THE COURT: All right. We'll take a short recess, pending the attendance of the chemist.

(Recess taken.) [59]

* * *

THE COURT: All right. People versus Judith H. Krivda and Rodger T. Minor. The record will reflect that both defendants are present with counsel.

Are you ready to proceed, Mr. Marcus?

MR. MARCUS: Mr. Taylor.

CHARLES STANLEY TAYLOR

called as a witness by and on behalf of the People, having been first duly sworn, was examined and testified as follows:

THE CLERK: Will you state your full name, please?

THE WITNESS: Charles Stanley Taylor.

DIRECT EXAMINATION

BY MR. MARCUS:

Q Mr. Taylor, what is your occupation?

A I am a chemist, employed by the Los Angeles Police Department.

Q How long have you been employed by the Police Department?

A About two and a half years.

Q As a chemist, that is?

A Yes, sir.

Q Prior to that employment, were you employed by anyone else?

A Yes, sir.

Q Who was that by? [60]

A I worked for Ralston Purina Company. I worked for the Air Pollution Control District.

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Q And how were you employed by these other two people, two other companies?

A As an analytical chemist.

Q What school did you go to for your chemical degree?

THE COURT: Why don't you just give us your qualifications and your background, Mr. Taylor, with reference to qualifying yourself as an expert forensic chemist?

THE WITNESS: I have a Bachelor of Science degree from the University of Washington in chemistry and approximately nine years experience as an analytical chemist.

BY MR. MARCUS:

Q Now, during this two and a half year period with the Los Angeles Police Department, have you had the opportunity to examine marijuana in various forms, such as seeds, debris, cigarettes and larger quantities in other types of sizes?

A Yes, sir.

Q Approximately how many times have you examined marijuana during this last two and a half years?

A Oh, I would estimate between five and ten [61] thousand times.

Q How many stipulation forms have you prepared for preliminaries?

A Three, four, five thousand. I don't know.

Q Have you ever qualified as an expert in the Superior Courts of the County of Los Angeles?

A Yes, sir.

Q Was this for the purpose of identifying marijuana?

A Some of it.

Q Approximately how many times did you qualify as an expert in the Superior Courts of the County of Los Angeles for the purpose of identifying marijuana?

A Possibly sixty or seventy times.

MR. MARCUS: Your Honor, may I approach the witness?

THE COURT: Yes. Anything further with reference to his qualifications, Mr. Marcus?

MR. MARCUS: No, Your Honor.

THE COURT: All right. Mr. Brown, would you like to examine the chemist with reference to his qualifications?

MR. BROWN: Not with respect to his qualifications.

THE COURT: Do you stipulate he is an expert forensic chemist?

MR. BROWN: Yes, Your Honor.

THE COURT: For the purpose of these proceedings? [62]

MR. BROWN: Yes, Your Honor.

THE COURT: All right.

BY MR. MARCUS:

Q Mr. Taylor, I have several articles in my hand, plus an envelope, which has been marked for identification as People's Two. Have you ever seen this envelope before?

A Yes, sir.

Q Does your signature appear on any part of this envelope?

A Yes, sir, it does.

Q Now, I would like to direct your attention to the articles which I have also brought to the witness stand. Do you recognize these articles?

A Yes, sir.

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Q Have you ever seen them before?

A Yes, sir.

Q Now, I would like to direct your attention first to a yellow piece of paper, which has been previously identified as a bindle. I would like you to examine the contents of this bindle.

THE COURT: Does that come from T-3?

MR. MARCUS: T-3, Your Honor.

Q And tell me, Mr. Taylor, based upon your experience, what do you find the contents to be as to their chemical makeup or identification? [63]

A Well, there's numerous marijuana seeds in here. There is approximately seven or eight cigarette butts containing marijuana.

Q Now, I'd like you to take a look at an envelope marked T-4.

THE COURT: Let's not confuse it there. Close that one up before you open the other one.

BY MR. MARCUS:

Q Mr. Taylor, I'd like you to take a look now at the contents of T-4 and tell me what you find these contents to be as far as chemical composition.

A There's a quantity of cigarette butts and miscellaneous debris, a total weight of about half a gram, which contains marijuana.

Q Now, I'd like you to take a look at the items which have been marked for identification as part of People's Two and marked as T-2, two plastic vials, clear plastic vials. What are the chemical compositions of these particular seeds?

A These are marijuana seeds.

Q Finally, Mr. Taylor, do you remember making any examinations of this particular water pipe?

A I have no recollection of it, other than what I can read on this report.

Q What do you read on the report as to this [64] particular pipe?

A It is a pipe that contains marijuana residue.

MR. MARCUS: Thank you. No further questions.

THE COURT: All right. Mr. Brown.

CROSS EXAMINATION

BY MR. BROWN:

Q Directing your attention, sir, to the yellow piece of paper which has sometimes been referred to as a bindle, you stated that that contained marijuana. Is it your testimony that all the debris, other than the paper, is marijuana?

A I would say most of it is.

Q Is there any other substance there?

A There's a plastic capsule here, miscellaneous other debris.

Q How do you arrive at the conclusion that all that was marijuana debris as opposed to, for example, ordinary tobacco?

MR. MARCUS: Your Honor, I object to the question. It assumes facts not in evidence.

THE COURT: Overruled.

MR. MARCUS: Not testified to, also, by the witness.

THE COURT: Overruled.

THE WITNESS: I ran a chemical test upon this material. [65]

BY MR. BROWN:

Q All the material or just a couple of grains of it?

A Just a few pieces.

Q Well, how are you able to make a determination

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from a couple of, whether it be a grain or a small fragment of a leaf, as to the other parts?

A I took what I considered to be a representative sample of this, placed it under a microscope and also performed chemical tests on it.

MR. BROWN: Can I approach the bench?

THE COURT: Yes.

BY MR. BROWN:

Q So it is your testimony that this brown substance there is marijuana?

MR. MARCUS: Indicating some substance in the yellow bindle.

THE WITNESS: No, sir. I didn't say that all of this was marijuana. I said that there was—it is mostly marijuana.

BY MR. BROWN:

Q Well, you notice there's a good part of this brown substance.

MR. MARCUS: I'd object to that statement, a [66] great part.

THE COURT: Well, I think you can ask Mr. Taylor the question, rather than make a statement, Mr. Brown.

MR. BROWN: All right.

Q Then distinguishing what appears to me, anyway, to be a light brown substance from the other debris, how would you characterize that?

A It looks like tobacco to me.

MR. BROWN: No further—

Q Now, with respect to—I do have some more questions.

With respect to T-4, I want to again show you the—I have in my hand the substance that I have taken out of the bag.

MR. MARCUS: Your Honor, I would object again to the introduction of these particular items as being irrelevant and immaterial.

THE COURT: Overruled. Ask your question, Mr. Brown.

BY MR. BROWN:

Q Would you look at the—it looks to me like a brown kind of a leafy substance. Would you comment on what substance you think that is?

A It appears to be tobacco.

MR. MARCUS: May the record please indicate that [67] Counsel had taken the substance from a small envelope in his possession?

THE COURT: All right. Dump it out on that piece of paper and put it back in the envelope.

BY MR. BROWN:

Q Then with respect to the two vials of seeds, you examined some of the seeds in each one?

A Yes, sir.

Q And on the basis of that, you concluded that all the seeds were marijuana seeds?

A Yes, sir.

MR. BROWN: No further questions.

MR. MARCUS: Your Honor, I'd like to just correct the one statement I made as to the little envelope. It did not come from Counsel's possession but was one of the items marked collectively as People's One.

THE COURT: People's Two.

MR. MARCUS: Excuse me. People's Two. No redirect, Your Honor.

THE COURT: Let me ask you a question, Mr. Taylor. In the process of examining this, tell us what you do.

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THE WITNESS: Are you talking about just in general?

THE COURT: Just when you examine marijuana, what do you do? [68]

THE WITNESS: I do a chemical test on it.

THE COURT: What's the chemical test?

THE WITNESS: It's known as the Duquenois test.

THE COURT: Of what does that consist?

THE WITNESS: It consists of applying a few drops of this Duquenois reagent to marijuana in a test tube, followed by a few drops of concentrated hydrochloric acid, followed by approximately one cubic centimeter of chloroform. If a purple color in the lower layer results, this is the test for marijuana.

THE COURT: What happens to the portion that you examine?

THE WITNESS: It is destroyed in the analysis.

THE COURT: In other words, what you are saying is that if you tested it all that you'd wind up destroying it all, is that correct?

THE WITNESS: Yes, sir.

THE COURT: That's the reason you test just a representative sample?

THE WITNESS: Yes, sir.

THE COURT: Did you do that with all of the items that you testified to there?

THE WITNESS: Yes, sir.

THE COURT: Anything further, Mr. Brown?

MR. BROWN: Nothing further, Your Honor.

THE COURT: Anything further, Mr. Marcus? [69]

MR. MARCUS: No, Your Honor.

THE COURT: All right. Thank you very much, Mr. Taylor.

MR. MARCUS: Your Honor, the People at this time would like to have People's One, Two and Three, heretofore marked for identification, to be received into evidence.

THE COURT: Any objection, Mr. Brown?

MR. BROWN: I would object, Your Honor, on the basis that it was an illegal search and seizure, that there was no probable cause, that there was no compliance with Section 844 of the Penal Code with reference to the entry into the house and that there's nothing to connect up the defendants Rodger Minor or Judith Krivda or either of them with the items.

THE COURT: All right. Any comment, Mr. Marcus?

MR. MARCUS: Yes, Your Honor. As far as probable cause goes, I would like to cite three different cases for the proposition that where someone receives information from an untested informant that it is sufficient if that information is later corroborated by other facts, sources or circumstances. In this particular case we do have corroboration to provide probable cause for the arrest of first defendant Minor and then defendant Krivda.

Specifically, we have the fact that the officers observed two young children in the area of the address after having first received information that there were young [70] children present at that address. A utility check showed that one Judy Krivda was registered as the person using utilities at that address, after having been told that a Judy was at that address.

Criminal records showed that there were three Krivdas arrested for some violations in the County of Los Angeles and Edward Joseph Krivda had been arrested for two drug violations and that this same Edward Joseph Krivda had a wife named Judy. The informa-

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tion received from the untested informant was that there was certain narcotics activity at this address.

Furthermore, the officers corroborated this information by sifting, in a sense, the contents of a trash barrel prior to entering the location and formed the opinion at that time that the contents appeared to be marijuana and other debris. Based upon these facts, the officers had probable cause to make the arrest.

Now, bringing my attention to Section 844, there is no violation of Section 844, since defendant Minor was at the door at the time the officers placed him under arrest. They were on one side of the screen door. He was on the other. They placed him under arrest. 844 doesn't apply.

Finally, as to the possession element itself, defendant Minor was observed to go out to the trash area, wrapped or dressed only in a towel. Then later on he was [71] arrested dressed again only in a towel. This would show some evidence of the fact that he was staying or, at least, in some repose at this address.

As far as proving possession on the part of defendant Krivda, we have the rent receipt for that address. We have a receipt from the Water and Power Company. Furthermore, both defendants were found at the residence at the time.

Finally, it is not necessary that people show exclusive possession of a residence to show possession of a narcotic. I would direct the Court's attention as to this proposition to the latest case on possession in the advance sheets, People versus Kortopets, 264 ACA 209. Based on all these arguments, Your Honor, I feel that the People have shown not only probable cause to arrest the defendants, but the right to enter the premises and to make a further search of the contents of that

premises. Furthermore, the facts do show that both defendants for the purposes of the preliminary hearing can be shown to have had either constructive or actual possession of the marijuana. On this basis, the People would then submit any further arguments.

THE COURT: All right. Anything further, Mr. Brown?

MR. BROWN: Yes. I would like to make some further argument. [72]

THE COURT: Yes. Go ahead.

MR. BROWN: One thing, I would like to argue somewhat from this photograph that has not been introduced into evidence but is Defendant's A and could it be introduced at this time?

THE COURT: Well, let me see it. Let me hear your argument with reference to the photograph.

MR. BROWN: Addressing myself to just the points that were raised by the Prosecution, as far as the corroborating factors, I would have this to say. In addition to the anonymous tip, the officers evidently had obtained information about an arrest record of Edward Joseph Krivda. The anonymous tip made no reference to an Edward Joseph. Not only that, that the arrest was for possession of pills of some kind and the tip referred to marijuana. It also referred to methedrine, but when they got down to the garbage can, they saw a substance which, at least, resembled marijuana, but be that as it may, it was a mere arrest and also Gates testified that he didn't exactly recall when the arrest was made but it was one or several years ago. I believe that was his exact testimony.

When the officers actually arrested Mr. Minor, they made no attempt to identify Mr. Minor as being the Edward Krivda in question in the arrest record. There

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was no testimony as to what this Mr. Krivda looked like. There was a letter in the garbage can belonging to Eddie Krivda, [73] however, but as I said, they made no attempt to ask Mr. Minor who he was or whether Mr. Minor is taller or shorter than this alleged Mr. Krivda.

Also, I would point out just in general that as Your Honor will notice from that photograph that Officer Gates identified as being the premises in question and also that the garbage can was in the general area in the picture where he saw it when he approached the house, that there's no real tie-in between that garbage can and the house. There was testimony by Officer Marsden that there was a fenced house to the rear of the premises. I think Officer Gates testified as to some type of premises in front of it and you will—

THE COURT: As I recall the testimony, Sergeant Gates observed the person who was later identified as Mr. Minor going out and getting the can and bringing it back to the front porch.

MR. BROWN: That's right, but he didn't observe him taking it out there or there was no testimony as to how long it had been there. There's no real testimony that that garbage can is on the property of the defendants or if anyone else could have used it. There seems to be—from the picture, it looks like the garbage can can't really be seen from the house so it would have been very easy for someone else to have placed this debris and the seeds, whatever it might have been, into the garbage can. [74] There doesn't seem to be really a great deal of connection—and I'm speaking now with respect to Mr. Minor—any real connection with himself, other than the fact that he picked up the garbage can.

It takes a little more than mere presence. There has to be a knowing possession and dominion, and since the home, there was some evidence to show that it belonged to Judith Krivda, there was absolutely none to suggest that the home or the garbage can or anything else belonged to Mr. Minor or how long he had been there, other than the couple of hours that the officers were looking, so at the very least, I would say there has been no evidence of any tie-in with Mr. Minor and that this definitely seems to be a case of non-exclusive access, in view of the fact there are other dwellings and anyone else could have thrown it in.

Also, I don't think there has really been sufficient proof that this is a single dwelling involved here. There is a letter in the garbage can that evidently was not written by or to either of the defendants involved here so there may be other parties involved.

With respect to what kind of evidence will sustain a charge of possession, I would like to cite a couple of cases. People versus Hancock, 156 Cal App 2nd 305, People versus Antista, 129 Cal App 2nd 47. In both these cases, the defendants were found upon premises where [75] narcotics were located but the Court held that there wasn't enough evidence to show a knowing possession or dominion over the narcotics and that mere presence was not enough.

Also, in another case, People versus Stanford, 176 Cal App 2nd 388, the defendant was found actually—let's see. He was in the bathroom where a sale had taken place but that wasn't enough to connect him up, either, and the Court has generally held that where you have non-exclusive access, you have got to have something in addition to the mere presence, and in People versus Redrick, 55 Cal 2nd 282, the Court

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articulated some of the additional factors that are required to convert mere presence of a narcotic into knowing possession and one of them was that the narcotics were found among the personal effects of the defendant, that there was a consciousness of guilt because of flight, false statements, evasive statements or suspicious behavior or that the defendant was a narcotic user or that defendant had recently been in possession of narcotics. Now, none of these four factors that were articulated are present in this case. In fact, there's nothing to show that the defendants knew about any of these items.

With respect to Mr. Minor, all the evidence with the exception of the water pipe was found evidently upstairs. Mr. Minor was found downstairs. Some of it was [76] found in the—the seeds evidently were found in a douche bag. I would hesitate to say that that would show any connection between those seeds and Mr. Minor.

I would also point to another case, Delgado versus the United States in 327 Fed 2nd 641. In that case, seven marijuana cigarettes and a small quantity of loose marijuana was found inside a dresser drawer and there were two defendants. There was a commonlaw relationship and the Court held that because they couldn't prove which one it belonged to that they couldn't show any knowing possession. It said—the Court said, "It is fundamental to our system of criminal law that guilt is individual. Here that means there must be sufficient evidence to support a finding as to each defendant that he or she had possession of the marijuana," and then it goes on, "no doubt, one of them did. Perhaps both did, but proof that does not give a rational basis for resolving the doubts necessarily

present in the situation pictured to the jury in this case is not sufficient."

Now, in that case a jury finding the defendants guilty was turned over on appeal and I would submit that that standard is not too different than the standard that you are applying for the preliminary hearing.

Now, that's so much for the adequacy of the evidence to show guilt as to Mr. Minor or Mrs. Krivda.

With respect to the search and seizure, I would just incorporate my earlier argument as to the garbage can [77] and the fact that the property there was not the property of the police, that, as testified to by Officer Gates, there was no permission obtained and, therefore, that was an illegal search.

Secondly, I would again reiterate my argument that the substance found as indicated in that yellow bag and also testified to by the expert, that that was mostly tobacco and so that there really wasn't much probable cause for the officers to conclude at that point that a felony had been committed, at least by the two defendants. There was no testimony how long the cans had been there and I would also point out that the tip came on the 1st of July and the examination of the garbage can came on the 9th of July so we are not dealing here with any fresh pursuit or hot tip that necessitated the officers moving quickly. The [sic] took their time and they certainly had time to obtain a warrant, either before looking into the garbage can or even afterwards, they had plenty of time. They looked in the garbage can around 11:00 o'clock. They made the arrest at 2:30 so they had time to go downtown and present it to a neutral magistrate or they also had time to make a chemical test to assure themselves before breaking into a private home as they did. I think that's

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very important that nine days did elapse and that there was no urgency here.

Next, I would also argue that 844 of the Penal Code [78] was not complied with because the screen door was closed and the evidence suggests that the officer just opened it and placed him under arrest at that point and I don't think that he identified himself properly or announced the purpose of his entry so that I think would conclude the points that I have to say with reference to introducing this evidence at the trial.

THE COURT: All right. Your objection to the admission of the evidence, Mr. Brown, will be overruled. People's One, Two and Three may be admitted.

People rest?

MR. MARCUS: People rest.

THE COURT: Any defense at this time?

MR. BROWN: I would like to put on one witness, Your Honor.

THE COURT: All right.

MR. BROWN: It will be very short. The Defense will call Augusta Harper. [79]

AUGUSTA HARPER

called as a witness by and on behalf of the People, having been first duly sworn, was examined and testified as follows:

THE CLERK: Would you state your full name, please?

THE WITNESS: Augusta Harper.

THE CLERK: What was that?

THE WITNESS: A-u-g-u-s-t-a H-a-r-p-e-r.

THE CLERK: Thank you. Just take the stand.

DIRECT EXAMINATION

BY MR. BROWN:

Q Mr. Harper, are you presently employed?

A Yes.

Q With whom are you employed?

A The Sanitation Department of the City of Los Angeles.

Q And how long have you been employed by that department?

A About five years and four months.

Q And on July 9th, 1968, did you have occasion to collect the garbage from the area that has been referred to as 1901 Nolden Avenue?

A Yes.

Q Did anything unusual happen during the collection of that garbage?

A Yes. Two officers—one asked us permission—[80] asked us would we empty our bin before we—one of the officers, first he identified his self by showing his badge and he said—he asked us would we pick the next stop up separate in the hopper, which we call the hopper, and without packing the truck up or putting anything else in the rear and to pull down there where he was waiting.

THE COURT: Was he waiting down the hill for you?

THE WITNESS: Yes.

THE COURT: All right.

BY MR. BROWN:

Q Now, Mr. Harper, do you remember any conversations that took place between the officers and the officers to you?

A One or two words. One of them said as they was looking through the trash and emptying the bags

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and things—he took out the cigarette butts and things and said they was—

MR. MARCUS: Your Honor, I'd object to any comments made by the officers as being hearsay declarations.

MR. BROWN: Your Honor, this goes—I am trying to show an inconsistent statement. The officer testified that he had no doubt as to what the substance was and that it was marijuana and I would like to offer the testimony of Mr. Harper that the officer stated that it was either—that the defendants were either rolling their own cigarettes [81] or that it was marijuana and that this goes to show that the officer's state of mind and what he believed at that particular time, which is inconsistent with what he testified.

THE COURT: All right. Well, we'll let it in, then.

MR. MARCUS: Your Honor, for the record, I would object to any statements by—

THE COURT: All right. Objection is overruled. What did the officer say?

THE WITNESS: Well, one of the officers—I don't know which one—made the statement that they was either rolling their own or they were smoking marijuana, and I went to the front of the truck and I came back and—

MR. MARCUS: Well, I would object to any further statements as being non-responsive.

THE COURT: All right. Anything further, Mr.—

BY MR. BROWN:

Q Did he say rolling their own cigarettes or just rolling their own?

MR. MARCUS: I would object to the question as being leading and also asking for—

THE COURT: He's already answered it, Mr. Brown.

MR. BROWN: No further questions.

THE COURT: Any cross examination? [82]

MR. MARCUS: No cross examination.

MR. BROWN: One further question on the picture. Do you think it needs any identification? Will you stipulate that that's where the garbage can was?

MR. MARCUS: I won't stipulate to it. I haven't been out there.

THE COURT: Ask him the question.

MR. BROWN: Could I have the Defendant's A?

THE COURT: It's on the stand.

BY MR. BROWN:

Q Mr. Harper, would you examine this picture? Does that look like the premises that have been referred to as 1901 Nolden Avenue?

A Yes, it does.

Q Notice where the garbage can is in the picture. Is that the position of the garbage can on the day that you collected the garbage?

A Well, it's hard—I can't remember, but I know most of the time they're a little bit back to the right, you know, back by this post, but I don't know where they was on that particular day.

MR. BROWN: May the record reflect that the witness has said that most of the time the garbage can is a little to the right-hand side of the picture, but no—

Q Was it closer to the house? [83]

MR. MARCUS: I'd object to this question, Your Honor, as both making a narrative form of statement and also being leading.

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MR. BROWN: Your Honor, I am just trying to identify whether this is the usual place where the garbage can is.

THE COURT Well, how far from where the garbage can is now was it on that particular day, if you know?

THE WITNESS: I don't remember where it was.

BY MR. BROWN:

Q But if I may refer to your previous answer, did you say that it was somewhat to the right?

MR. MARCUS: Your Honor, I'd object to that question as leading.

THE COURT: Overruled.

THE WITNESS: On that particular day, I don't remember.

BY MR. BROWN:

Q But generally, where is it located?

MR. MARCUS: Your Honor, I will object. Generally does not apply to that particular day.

THE COURT: Overruled. Where was it?

THE WITNESS: Generally a little bit more to the right. [84]

THE COURT: By more to the right, how far do you mean in feet?

THE WITNESS: Over by this post.

THE COURT: By what post?

THE WITNESS: The utility post.

THE COURT: All right. Anything further?

Mr. BROWN: Nothing further.

MR. MARCUS: One question, Your Honor.

CROSS EXAMINATION

BY MR. MARCUS:

Q Mr. Harper, you said that you have been employed in this capacity for five and a half years?

A Yes.

Q And how long have you been on this route?

A Since—about eight months.

Q Are you familiar with the occupants of that house?

A Well, I used to know one guy that came down sometime but I don't know whether they lived there or not but it wasn't him.

MR. MARCUS: I ask that be stricken as not responsive.

THE COURT: Overruled. Do you know either of these people here?

THE WITNESS: No, I don't.

THE COURT: All right. Do you know where that [85] trash can belongs, to what premises?

THE WITNESS: No. I never saw anybody come out to pick it up.

THE COURT: All right.

MR. MARCUS: No further questions.

THE COURT: Anything further, Mr. Brown?

MR. BROWN: No further questions.

THE COURT: Thank you very much, Mr. Harper. Anything further?

MR. BROWN: The Defense rests.

THE COURT: All right. Do you wish to have Defendant's A introduced in evidence?

MR. BROWN: Yes, Your Honor.

THE COURT: All right. Defendant's A may be received, also. Any further defense at this time?

MR. BROWN: No further defense.

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THE COURT: All right. Motion to dismiss will be denied.

It appearing to me that the offense in the within complaint mentioned, to wit, violation of Section 11530 of the Health and Safety Code, a felony, as to each defendant, has been committed and that there is sufficient cause to believe the within named Judith H. Krivda and Rodger T. Minor guilty thereof, I order that they be held to answer to the same.

Mrs. Krivda, I understand you are presently on [86] bail of $1,000.00, plus $250.00 penalty assessment, is that correct?

DEFENDANT KRIVDA: Um hm.

THE COURT: And Mr. Minor, I understand you are also presently on $1,000.00 bail, plus $250.00 penalty assessment, is that correct?

DEFENDANT MINOR: Yes, Your Honor.

THE COURT: All right. Bail up is to stand. Date of arraignment in the Superior Court will be the 18th day of September, 1968 at 9:00 A. M. in Department 100. [87] * * *

COMMITMENT

In the Municipal Court of Los Angeles Judicial District, County of Los Angeles, State of California. Division No. 33.

Hon. Clarence A. Stromwall, Judge Pro Tempore.

The People of the State of California, Plaintiff, vs. Judith H. Krivda and Rodger T. Minor, Defendant. No. A-234389.

IT APPEARING TO ME that the offense in the within complaint mentioned, to wit: Violation Section 11530, Health and Safety Code, has been committed and there is sufficient cause to believe the within-named JUDITH H. KRIVDA and RODGER T. MINOR, guilty thereof, I order that they be held to answer to the same and that they be admitted to bail in the sum of $1,000.00, and that they be committed to the custody of the Sheriff of Los Angeles County until they gives [sic] such bail.

DATED this 4th day of September, 1968.

/s/ Clarence A. Stromwall
Judge of the Municipal Court
Los Angeles Judicial District
County of Los Angeles
State of California
COMMITTING MAGISTRATE

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Reporter's Transcript on Appeal.

Superior Court of the State of California, for the County of Los Angeles, Department 117.

Honorable Robert Firth, Judge.

The People of the State of California, Plaintiff, vs. Judith H. Krivda and Roger T. Minor, Defendants. No. A 234 389.

September 15, 1969
October 23, 1969
October 24, 1969
December 12, 1969

Appearances: For the People: Evelle J. Younger, District Attorney, By: Quentin A. Clifton, Deputy, 600 Hall of Justice, Los Angeles, California 90012.

For the Defendants: Sam Bubrick, 205 South Broadway, Suite 600, Los Angeles, California 90012. [1]

Los Angeles, California, Friday, October 24, 1969; 11:00 A.M.

THE COURT: People versus Krivda and Minor.

MR. BUBRICK: Both of those defendants are present, your Honor.

THE COURT: All right. That was earlier submitted on the transcript. Let's see, for what purpose?

MR. CLIFTON: 1538.5.

THE COURT: Yes.

I have read the transcript.

MR. CLIFTON: Thank you. We have no additional testimony other than the fact that, I believe, Mr. Bubrick and I have agreed that we would stipulate—at least, I offer to stipulate that the same officer, Sergeant Gates, be deemed to have been called, sworn and testified that he had the truck in view at all times from the time that well was emptied until he went up and searched the well of the truck and sacks; that he actually searched the truck and the sacks from the garbage cans in this well but did not actually search the cans themselves.

MR. BUBRICK: All right, prior to being emptied in the well; is that it?

MR. CLIFTON: Yes.

MR. BUBRICK: So stipulated, your Honor.

MR. CLIFTON: Thank you.

THE COURT: There is an ambiguity a little bit here [12] in that:

> "What other contents of the envelope marked People's 2 did you find?
>
> "The portion of the items of the envelope, No. 7, was found in the garbage can by myself and my partner."

Was it found after? Before?

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MR. BUBRICK: I will stipulate that—

THE COURT: It is inconsistent with all the testimony here.

MR. BUBRICK: I will stipulate that, for the purposes of this hearing, your Honor can assume that what he meant was after he searched the contents of the trash can in the well of the truck and that he never searched the contents of the trash can before it was emptied into the well of the truck.

THE COURT: Well, did he recover People's 2 from the garbage can after it was emptied into the well?

MR. BUBRICK: Yes, I would stipulate to that.

MR. CLIFTON: And that is not precisely, I believe, what the Court had in mind. Did he find it in the can itself or in the well?

MR. BUBRICK: In the well.

MR. CLIFTON: In the well, I will so stipulate.

THE COURT: People's 2 was found in the well?

MR. BUBRICK: Yes—I assume after the trash had [13] been emptied into the well.

MR. CLIFTON: Thank you.

THE COURT: And there was no contraband recovered from the can itself by the officer?

MR. CLIFTON: No.

MR. BUBRICK: No, I don't think so.

THE COURT: All right. It is just inconsistent with all the other testimony as to what happened there for the purpose of this motion alone.

Now, it is your motion to suppress. I have read the transcript. Do you have anything additional?

MR. BUBRICK: I would like to call the defendant, Roger Minor, your Honor, on the 844 problem.

THE CLERK: Raise your right hand, please.

You do solemnly swear that the testimony you may give in the cause now pending before this Court shall be the truth, the whole truth and nothing but the truth, so help you God.

THE WITNESS: I do.

ROGER T. MINOR,

one of the defendants herein, called on his own behalf, testified as follows:

THE CLERK: Be seated and state your name in full.

THE WITNESS: Roger T. Minor. [14]

DIRECT EXAMINATION

BY MR. BUBRICK:

Q Mr. Minor, do you recall the circumstances surrounding your arrest at 1901 Nolden Street in the City of Los Angeles on July 9th—I believe, July 9th, 1968?

Yes, sir, I do.

Q And were you in a house or outside of a house or where were you?

A I was inside the house.

Q Tell the Court exactly what happened from the time that you were in the house until the time you were arrested—rather, of your arrest, if you will, please.

A I was standing in the middle of the room. Judy said that she thought she heard someone outside and she started up the stairway. It's a two-story house. A matter of seconds later two men appeared outside the screen door, came into the room. Altogether the time seemed just about two, three, four, five seconds from the time I first saw the people until they came to the

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house. I was standing in the middle of the room. Officer Gates came in through the screen door, put my hands behind my back and said, "Okay, Ed."

I asked him then, as he was putting me down into the chair, sitting me down, "What's this all about?"

He said, "It's all about narcotics. You're [15] under arrest for narcotics."

Q Prior to the time that Officer Gates came into the house, Mr. Minor, had you heard any statement outside the house about, "You're under arrest, Ed," or, "Mr. Minor," or anything of that nature?

A I heard no one word spoken outside the house.

Q Did anybody identify themselves as a police officer before that person entered the house?

A No, sir, they did not.

Q Was Sergeant Gates by himself or accompanied by another officer?

A He was accompanied by another officer in a uniform.

Q The second officer was uniformed; is that correct?

A Yes.

Q Were you ever told you were under arrest at any time before these officers entered the house?

A No, sir.

MR. BUBRICK: I have nothing further.

CROSS EXAMINATION

BY MR. CLIFTON:

Q How were you dressed at the time?

A I had just a towel wrapped around me.

Q You had previously gone out to get some garbage [16] cans?

A I had just come back up the hill. I believe I had picked up an empty garbage can, as I recall, and brought it up the hill.

Q Which officer, if you know, went to the front door?

A Officer Gates.

Q Where were you when they approached the front door?

A In the middle of the living room.

Q What did they say, if anything?

A The first word that I heard from any officer was, "Okay, Ed." I was startled by that, my name not being Ed.

Q Where was the officer that said that when he said that?

A He was standing immediately next to me, putting my hands behind my back handcuffing me.

Q Where was Judy at that time?

A She was upstairs.

Q Were you in view from the front door if someone were on the other side of the door?

MR. BURBRICK: That calls for a conclusion, your Honor.

THE COURT: Sustained.

Q BY MR. CLIFTON: Could you see from the front [17] door from where you were standing and see outside?

A Yes, sir, I could see outside.

Q Was it dark or light in the room?

A It was dark since it was the middle of summer, very hot day.

MR. CLIFTON: I have nothing further.

MR. BUBRICK: I have nothing further, your Honor.

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THE COURT: You may step down.

MR. BUBRICK: Defense rests on the 844 issues, rests on all issues.

THE COURT: People have evidence?

MR. CLIFTON: The People rely on the transcript on that point too as well as the actual testimony. It is all 1538.5.

THE COURT: Argument—

MR. CLIFTON: I suppose Mr. Bubrick—

THE COURT: Mr. Bubrick * * * [18]

Opinion of the Supreme Court of the State of California, Crim. 15295, dated July 12, 1971, may be found in the Petition for Writ of Certiorari, Appendix A, page 1.

Order of the California Supreme Court Denying Rehearing, dated August 1, 1971, may be found in the Petition for Writ of Certiorari, Appendix B, page 17.

Opinion of the California Court of Appeal, Crim. 18140, dated November 16, 1970, may be found in the Petition for Writ of Certiorari, Appendix C, page 18.

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Supreme Court of the United States.

April 3, 1972

California v. Judith H. Krivda and Rodger T. Minor, No. 71-651, October Term, 1971.

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND GRANTING PETITION FOR WRIT OF CERTIORARI.

"The motion of the respondents for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted."

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Supreme Court of the United States

No. 71-651 ~~October Term, 19~~

California,

Petitioner,

v.

Judith Krivda and Roger T. Minor

Order allowing certiorari. *Filed* April 3, 1972

The petition herein for a writ of certiorari to the Supreme Court of the State of California *is granted.*